Supreme Court, U.S.
FILED
MAY 13 1996
CLERK

No. 95-1469

In the Supreme Court of the United States

OCTOBER TERM, 1995

JOSEPH ORAN RICHARD, PETITIONER

v.

DAVID R. HINSON, ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

MARLEIGH D. DOVER
STEPHANIE R. MARCUS
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

10 pp

QUESTION PRESENTED

Whether petitioner's right to equal protection is violated by the Equal Access to Justice Act provision precluding individuals with a net worth of more than $2 million from recovering attorney fees from the government.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	3
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Ardestani v. *INS*, 502 U.S. 129 (1991)	6
Commissioner, INS v. *Jean*, 496 U.S. 154 (1990)	4
Dandridge v. *Williams*, 397 U.S. 471 (1970)	3, 5
Regan v. *Taxation With Representation*, 461 U.S. 540 (1983)	3

Constitution and statutes:

U.S. Const. Amend. V	3
Equal Access to Justice Act, Pub. L. No. 96-481, Tit. II, 94 Stat. 2325:	
§ 202, 94 Stat. 2325 (5 U.S.C. 504 note)	4
§ 203, 94 Stat. 2325 (5 U.S.C. 504)	2
Equal Access to Justice Act Amendments, Pub. L. No. 99-80, § 1(c)(1), 99 Stat. 183	5
28 U.S.C. 1915	6

Miscellaneous:

Award of Attorney's Fees Against the Federal Government: Hearings on S. 265 Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 96th Cong., 2d Sess. (1980)	4
H.R. Rep. No. 1418, 96th Cong., 2d Sess. (1980)	4

In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-1469

JOSEPH ORAN RICHARD, PETITIONER

v.

DAVID R. HINSON, ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A6) is reported at 70 F.3d 415. The orders of the National Transportation Safety Board (Pet. App. A7-A9) and the Administrative Law Judge (Pet. App. A10-A12) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 12, 1995. The petition for a writ of certiorari was filed on March 11, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a helicopter pilot who owns Industrial Helicopters of Lafayette, Louisiana. Pet. 3. The underlying administrative proceeding arose when the Administrator of the Federal Aviation Administration issued an emergency order revoking petitioner's airman's certificate. Pet. App. A2. Petitioner successfully appealed the revocation, and then filed an application with the National Transportation Safety Board (NTSB) for fees and expenses under the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA). Pet. App. A2. In the application, petitioner acknowledged that his net worth exceeded $2 million, but contended that EAJA's net-worth limitation—which precludes individuals with a net worth of more than $2 million from recovering EAJA fees—violated his equal protection rights. *Id.* at A8-A9. The Administrative Law Judge dismissed petitioner's application because petitioner admittedly did not meet EAJA's eligibility requirements (*id.* at A12), and the NTSB affirmed the dismissal, noting that it did not have the authority to pass on EAJA's constitutionality (*id.* at A9). Petitioner filed a petition for review in the court of appeals. *Id.* at A2.

2. The court of appeals held that EAJA's net-worth limitation does not violate petitioner's equal protection rights and therefore affirmed the NTSB's dismissal of the fee application. Pet. App. A6. Applying the rational basis standard of review, the court concluded that EAJA's net-worth limitation withstands constitutional scrutiny because it is rationally related to the congressional purpose of reducing the financial deterrent typically faced by a person wishing to contest unreasonable government

action. The limitation reasonably identifies "the outer financial limits of the individuals who the legislature determined may forego challenging the government because of the expense involved." *Id.* at A5-A6.

ARGUMENT

Petitioner asserts that EAJA's net-worth limitation violates his Fifth Amendment right to equal protection. His petition does not challenge the applicability of the rational basis test to the constitutional inquiry, nor does it criticize the court of appeals' articulation of that test. Instead, petitioner argues that the net-worth limitation is not rationally related to Congress's purpose in enacting EAJA.

The rational basis test is satisfied if the legislative classification "bear[s] a rational relation to a legitimate governmental purpose." *Regan* v. *Taxation With Representation*, 461 U.S. 540, 547 (1983). As this Court has explained:

> If the classification has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality. The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

Dandridge v. *Williams*, 397 U.S. 471, 485 (1970) (internal citations and quotations omitted).

EAJA's net-worth limitation easily meets this standard. In passing EAJA, Congress's "specific pur-

pose" was "to eliminate for the average person the financial disincentive to challenge unreasonable governmental actions." *Commissioner, INS* v. *Jean*, 496 U.S. 154, 163 (1990). Congress recognized that "certain individuals * * * may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings." The purpose of the Act was "to diminish the deterrent effect of seeking review of, or defending against, [such] governmental action by providing in specified situations an award of attorney fees." Equal Access to Justice Act, Pub. L. No. 96-481, § 202, 94 Stat. 2325 (Congressional Findings and Purpose Note following 5 U.S.C. 504). Accord, H.R. Rep. No. 1418, 96th Cong., 2d Sess. 10 (1980) (EAJA "focuses primarily on those individuals for whom cost may be a deterrent to vindicating their rights").[1]

---

[1] As Senator Domenici, one of the primary sponsors of the bill that became EAJA, explained during the legislative hearings (*Award of Attorneys' Fees Against the Federal Government: Hearings on S. 265 Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary*, 96th Cong., 2d Sess. 16 (1980)):

> The basic problem this bill seeks to overcome is the inability of many Americans to combat the vast resources of the Government in administrative adjudication. In the usual case, a party has to weigh the high cost of litigation or agency proceedings against the value of the rights to be asserted. Individuals and small businesses are in far too many cases forced to knuckle under to regulations even though they have a direct and substantial impact because they cannot afford the adjudication process. * * * The purpose of the bill is to redress the balance between the

The net-worth limitation reflects Congress's rational conclusion that the financial burden is unlikely to be a significant deterrent for individuals, like petitioner, with a net worth exceeding $2 million. These individuals are treated differently from the average litigant because, in view of their wealth, there is not a comparable need to relieve them from the deterrent effect of litigation costs.[2]

Petitioner argues that the net-worth limitation cannot survive rational basis scrutiny. He asserts (Pet. 8) that "Congress cannot determine that some claimants' redress shall be greater than others based on factors wholly unrelated to the claim and the underlying merits of the action." But the purpose of EAJA is not simply to provide additional compensation to parties prevailing against the government; rather, "[t]he clearly stated objective of the EAJA is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby to deter the unreasonable exercise of

---

Government acting in its discretionary capacity and the individual.

[2] Congress initially set the financial cut-off point for individuals at a net worth of $1 million; it raised that point to $2 million when EAJA was re-enacted. EAJA Amendments, Pub. L. No. 99-80, § 1(c)(1), 99 Stat. 183. Petitioner does not challenge the $2 million cut-off point Congress selected. Instead, he argues simply that "in cases where the fees are likely to be significant, the promise of redress may be an important consideration in [anyone's] decision to challenge the agency's action." Pet. 10. That conclusory assertion is not sufficient to demonstrate that Congress was irrational in deciding that, for individuals with a net worth of more than $2 million, the costs of litigation are unlikely to be so significant and widespread a deterrent as to warrant remedial legislation. See *Dandridge* v. *Williams*, *supra*.

Government authority." *Ardestani* v. *INS*, 502 U.S. 129, 138 (1991). In light of that purpose, a distinction based on the net worth of the party is entirely rational. Cf. 28 U.S.C. 1915 (providing for in forma pauperis proceedings in federal courts).

Contrary to petitioner's suggestion (Pet. 8), the EAJA net-worth limitation is not analogous to a net-worth limitation on persons entitled to recover under the Federal Tort Claims Act, or to a similar restriction on statutory reparations to World War II internees. EAJA neither limits petitioner's access to the courts, nor does it deny him a cause of action that is available to others. Nothing in EAJA prohibits petitioner from defending against or challenging government action in agency proceedings or the courts. Petitioner's only complaint is that Congress has not subsidized the litigation of individuals like him who already have the resources to gain meaningful access to the courts.

Petitioner asserts that EAJA's net-worth limitation is not rationally related to the statute's purpose of deterring unreasonable government action, since that purpose would be "fully served by compensating wealthier claimants as well as parties with fewer personal resources" (Pet. 10). It is not necessary, however, for a statutory provision to be rationally related to all of the statute's purposes. It is enough that the net-worth limitation is, as we have shown, rationally related to the purpose of eliminating substantial financial disincentives to suit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

MARLEIGH D. DOVER
STEPHANIE R. MARCUS
Attorneys

MAY 1996